# Commonwealth of Massachusetts
# State Ethics Commission

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**CONFLICT OF INTEREST OPINION**
**EC-COI-07-2**

**QUESTION**

Is the Vineyard Conservation Society, Inc. ("VCS"), a non-profit, tax exempt, charitable environmental advocacy organization, a "business organization" within the meaning of the conflict of interest law, G. L. c. 268A?[1]

**ANSWER**

No. VCS, as a charitable, non-profit organization which does not substantially engage in business activities, is not a "business organization" within the meaning of G. L. c. 268A.

**FACTS**

VCS is a local member-supported, non-profit, charitable corporation formed and organized under G. L. c. 180 and recognized as a tax-exempt entity under section 501(c)(3) of the Internal Revenue Code.[2] VCS is a registered public charity in Massachusetts.[3] VCS is governed by a thirty-person board of directors and employs two full-time and one part-time employee. VCS's core mission is to protect Martha's Vineyard's natural environment through education, advocacy and land preservation.

VCS achieves its land preservation goals by assisting landowners in placing voluntary restrictions against development on their land or deeding the land or interests in the land to other entities, by contributing funds so that others may acquire such lands and, on rare occasions, by holding temporary fee interests in land and permanent conservation restrictions on land. VCS offers free legal assistance to private landowners and municipalities by drafting conservation restrictions and other legal instruments to preserve undeveloped land, directs landowners to entities that can receive gifts of land or conservation restrictions, contacts potential funding sources, contributes to acquisition costs, and temporarily holds ownership or easements in land and conveys such interests to suitable entities. VCS has never sold any land or interest in land for a profit. VCS rarely holds a permanent fee interest in property. VCS does not own the building or land where its headquarters is located. VCS does, however, hold permanent conservation restriction interests in land in which other conservation groups are not interested. VCS has the right to enforce restrictions on the development of such land. VCS does not actively manage any of the properties it owns or in which it holds an interest.

VCS pursues its advocacy objectives by monitoring and reviewing development proposals, participating in local land use permitting proceedings, offering testimony and expertise at public hearings, taking positions on public land planning issues, engaging in administrative and judicial proceedings and employing legal strategies to save land, including litigation against development VCS considers inappropriate.

VCS achieves its educational goals through the publication of its free on-line Conservation Almanac, the sponsorship of free lectures and walks, and the sale of books on trails and edible plants. VCS does not sell goods, except for a trail guide, a book on edible

plants and hats and T-shirts with the VCS logo, all of which sales cumulatively raise about $3,000, slightly more than one percent of its annual operating expenses.

VCS has an annual budget of about $260,000, which it raises almost exclusively through membership donations, an annual appeal letter and an annual fundraiser. VCS does not employ a professional fundraiser or director of development. VCS occasionally applies for grants and has, for example, received a grant from a private foundation to research strategies to protect rural road and conduct title research on potential conservation land and won a grant from the state Department of Environmental Management to implement a public walking trail project on private lands. VCS does not charge for the services it provides. When VCS conveys land to third parties, it does not make a profit but rather conveys land to entities that intend to hold the land for open space preservation purposes.

**DISCUSSION**

A wide variety of non-profit organizations have been treated as business organizations for the purposes of G. L. c. 268A in numerous prior conflict of interest law opinions, first by the Attorney General,[4] whose opinions the General Court made provisionally binding on the Commission,[5] and subsequently by the Commission.[6] Commission opinions have construed the term "business organization" broadly to include non-profit organizations in general[7] and, more narrowly, to include non-profit organizations that "conduct business," such as "the buying and selling of commodities or services." [8] The Commission has also stated that "the plain meaning of the term 'business organization' is an organization whose purpose is to engage in 'commercial activity for gain, benefit, advantage, or livelihood.'"[9] Commission opinions have not, however, limited the term's application to profit-making entities.[10]

In responding to this opinion request, we reconsider the term "business organization" in the context of G. L. c. 268A and, as explained below, conclude that charitable non-profit organizations which, like VCS, do not substantially conduct business activities, are not business organizations for purposes of the conflict of interest law.

"Business Organization" Reconsidered

Sections 6, 13 and 19, in relevant part, respectively prohibit a state, county and municipal employee from participating as such in any particular matter in which "a business organization in which he is serving as officer, director, trustee, partner or employee, or any person or organization with whom he is negotiating or has any arrangement concerning prospective employment, has a financial interest." These sections appear to be designed to ensure that governmental decision-makers are not influenced by their own financial interests, or those of their immediate family members or those of certain other persons or entities with whom they are closely associated; helping to ensure that governmental decisions are made impartially and in the public interest.

The terms "business," "organization" and "business organization" are not defined in G. L. c. 268A.[11] Accordingly, they must be construed following established principles of statutory interpretation. [12]

Ordinary Meaning

The word "organization" has a readily understood common meaning.[13] A non-profit corporation, like VCS,[14] would unquestionably be included scope of the term "organization" as the word is commonly used and understood.[15]

The common and approved usage of the word "business" is less clear. Because the word has so many meanings, the intended meaning of "business" in a given usage may be uncertain and indefinite.[16] The word may mean broadly any "serious work or endeavor;" [17] occupation, pursuit, work or trade; profession; an activity of some continuity, regularity and permanency; a means of material being and livelihood or occupation or employment; gainful activity; and "that which habitually busies or occupies or engages the time, attention, labor, and effort of men as a principal serious concern or interest or for livelihood or profit."[18] The term may also mean, in its most narrow sense, a commercial enterprise carried on for profit.[19]

Accordingly, the phrase "business organization" is susceptible to more than one construction. Construing the term most broadly, most non-profit organizations, particularly non-profit corporations, are "business organizations." That is, most non-profit entities, including non-profit corporations and associations, are "organizations" and, in a broad sense, conduct "business." In this broadest, generic sense of an entity formed for a serious purpose or activity, many, if not most, non-profit organizations would appear to be business organizations.[20]

It is not evident, however, that the broadest and most inclusive reading of the term "business organization" is its ordinary meaning in common daily usage. Thus, we think it likely that the phrase would generally be understood to refer to something more specific than an entity formed for a serious purpose. For example, a club formed to collect and distribute food to the needy or a neighborhood group formed to pool finances and oppose a local development, while both entities formed for serious purposes, would not commonly be thought of as business organizations.

Conversely, a narrow reading of "business organization" which would exclude all non-profit organizations from the term's scope would construe the term to have a meaning more narrow and technical than its common usage indicates.[21] Thus, for example, common usage would likely include a chain of hospitals within the meaning of the term business organization even if the chain were operated by a non-profit organization.

Legislative Intent

The meaning of the term business organization in G. L. c. 268A cannot be positively determined from the statute's legislative history. There is no official record of what the Legislature intended by enacting the statute with the term business organization rather than the more inclusive term organization, used in the federal conflict of interest statute. While some statutory history[22] and contemporaneous scholarship is supportive of a narrow reading of business organization to exclude non-profit entities, [23] such a reading is not required.[24]
It is noteworthy that the General Court's subsequent legislation concerning ethics and the Commission has not been inconsistent with a broad reading of business organization. [25]

A Workable Meaning

The Commission must give the conflict of interest statute a workable meaning;[26] that is, a reading that will accomplish the statute's essential purpose. At the same time, we are bound by the limits imposed by the statutory language enacted by the Legislature. While the Legislature enacted §§ 6, 13 and 19 in order to help ensure that governmental decisions are

made impartially and in the public interest by prohibiting public employees from participating as such in particular matters involving the financial interests of certain persons and entities with whom they are closely associated, the Legislature also chose to limit those prohibitions by using the term "business organization" instead of the more general term "organization."[27]

A reading of business organization to exclude all non-profit organizations would ignore the reality that many non-profit organizations are essentially businesses, and would not support the purpose of the sections.[28] Conversely, a reading of business organization to include all non-profit organizations, while arguably furthering the sections' broader purpose, would ignore that there are some non-profit organizations that are not businesses in any commonly understood meaning of that term and would render the word business in the sections virtually superfluous and meaningless.[29]

Many non-profit corporations regularly provide services in exchange for fees or goods in exchange for payment. Many such non-profit organizations regularly compete for private and government contracts (including grants) and are vendors to private clients and public agencies. In short, they regularly participate in the marketplace and do business with private parties and the government. Such transactional activities of non-profit organizations are often the source of livelihood for the organization's officers and employees. Such non-profit organizations are reasonably included within the scope of the term business organization.

Some non-profit organizations do not provide services in exchange for fees and do not transact business with private parties or the government. They do not participate in the marketplace; except for, perhaps, the marketplace of ideas. Instead, such organizations provide their services freely and derive their subsistence from membership fees and donations. Such non-profit organizations, which do not engage in any activities that are commonly considered business, are not reasonably included within the scope of the term business organization.

Accordingly, in order to best effectuate the purpose of the §§ 6, 13 and 19, while respecting the limits of the statutory language, we reject both extremely narrow and extremely broad readings of the term business organization. Instead, we conclude that some non-profit organizations are business organizations and some are not, based on their actual activities. In short, consistent with our advice in EC-COI-88-4, non-profit organizations that substantially engage in business activities, such as selling goods or providing services in exchange for fees, are business organizations for G. L. c. 268A purposes. Conversely, making explicit what we implied but did not state in EC-COI-88-4, charitable, non-profit organizations that do not substantially engage in any business activities are not business organizations for G. L. c. 268A purposes.

In determining whether a non-profit organization is substantially engaged in business activities, such that it will be a business organization for the purposes of G. L. c. 268A, we will consider the following factors: (1) whether the organization's activities involve commerce, trade, the sale of goods or the provision of services in exchange for fees (or other compensation) or any other activities, including professional activities, that are commonly understood to be business activities; (2) whether the organization's business activities are engaged in for its support or profit;[30] (3) whether the organization's business activities are continuously or regularly engaged in;[31] and (4) whether the organization's business activities constitute a significant rather than *de minimis* portion of the total activities of the organization.[32] Thus, for example, a non-profit organization which primarily supports itself by regularly providing services in exchange for fees or other compensation will be a business organization for purposes of G. L. c. 268A, even though it also receives charitable donations. By contrast, a non-profit organization

which is primarily supported by charitable donations and provides all of its services without charge will not be a business organization for G. L. c. 268A purposes, even if it derives a small percentage of its support from its incidental sale of goods.

VCS

VCS's sale of books, trail guides and hats and T-shirts, while traditional business activity, is not substantial and is a very small part of the organization's total activities. (VCS derives less than two percent of its annual operating budget from its sale of goods.) By contrast, VCS's educational, advocacy and land preservation activities, as described above, do not fall within the common and ordinary meaning and usage of the term "business." VCS is neither organized for the purpose of engaging in commerce or trade for gain, benefit, advantage or livelihood, nor is it substantially engaged in the provision of goods or services for payment or fees.[33]

We find that VCS's incidental, limited business activity through its sale of merchandise, on which VCS relies for less than two percent of its annual operating budget, is *de minimis*[34] and does not render VCS a business organization for G. L. c. 268A purposes. We further find that VCS does not otherwise substantially engage in business activities. We therefore conclude that VCS is not a business organization within the meaning and for the purposes of G. L. c. 268A.[35]

The Effect of VCS Not Being a Business Organization

Given that VCS is not a business organization within the meaning of § 19, the section would not prohibit a VCS director who is also a local elected municipal employee from participating as a municipal employee in particular matters simply because of VCS's financial interest in the matters. That does not mean, however, that his ability to participate as a municipal employee in matters affecting VCS would be unrestricted by the conflict of interest law. To the contrary, he would be subject to the following restrictions.

First, such a VCS director should keep in mind that particular matters affecting VCS may also affect his own financial interests and those of persons and business entities with whom he may be closely connected. He would, as a municipal employee, remain subject to § 19 prohibitions as to matters in which he, his immediate family members, partner(s), or any "business organization" in which he is serving as an officer, director, trustee, partner or employee, or any person or "organization" (including governmental and non-profit organizations) with whom he is negotiating or has any arrangement concerning prospective employment, have/has a financial interest. [36]

Second, such a VCS director would, as a municipal employee, be required to publicly disclose the fact of his service as a VCS director and the relevant circumstances of his participation as a municipal employee in matters affecting the financial or other significant interests of VCS prior to his participation in such matters,[37] and to act fairly and impartially in all such matters.[38]

Third, as a municipal employee, the VCS director would be generally prohibited from acting as VCS's agent[39] in any particular matter in which the municipality is a party or has a direct and substantial interest.[40]

**CONCLUSION**

Based on our reconsideration of the meaning of the term business organization in G. L. c. 268A, §§ 6, 13 and 19, we conclude that neither the common and ordinary meaning of business organization nor the legislative history and intent of the statute require or support the inclusion of charitable, non-profit organizations that do not substantially engage in business activities within the scope of the term. Accordingly, the Commission will not treat charitable, non-profit organizations that, like VCS, do not substantially engage in business activities as business organizations for conflict of interest law purposes.

**DATE AUTHORIZED**: June 13, 2007

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[1] VCS has asked this question because a former VCS director who is also an elected municipal official on Martha's Vineyard resigned from the VCS board of directors when he was advised by the Commission that he was prohibited by G. L. c. 268A, § 19 from participating as a municipal official in any matter in which VCS, a business organization in which he was serving as a director, had a financial interest.

[2] As a § 501(c)(3) corporation, VCS had to demonstrate that its exclusive purpose is charitable, rather than commercial, and it is subject to a number of restrictions: none of its net earnings may inure, directly or indirectly, to the benefit of organization insiders; it may not engage in legislative lobbying as more than an incidental part of its activities; it may not participate in any campaign for public office; its activities must primarily benefit either the public at large or a sufficiently large and distinct class of persons to be broadly characterized as charitable and it may not benefit private persons who are not members of a charitable class more than incidentally; and it may not engage in activities that violate law or fundamental public policy.

[3] All public charities engaging in charitable work or fund-raising in the Commonwealth must register and file annual financial statements with the Division of Public Charities of the Office of the Attorney General. G. L. c. 12, §§ 8E and 8F.

[4] Although the Attorney General initially construed "business organization" to exclude non-profit organizations, *see, e.g.,* A.G. Conflict Opinion Nos. 176 and 586, from 1974 until 1978 when the Commission was created and the Attorney General ceased giving conflict of interest law opinions, the Attorney General, without explaining the change of position, construed the term to include non-profit organizations. *See, e.g.,* A.G. Conflict Opinion No. 643 (non-profit self-help agency seeking DMH funding); No. 648 (charitable trust contracting with state agency to further develop and market simulation games developed by the state agency); No. 683 (a non-profit historic restoration and preservation corporation with no current or pending state contracts or funding, deriving its support from gifts, grants, contributions, the sale of craft products, admission fees and rental payments from space in a historic mill); No. 777 (non-profit foundation receiving partial funding from DMH for mental health training and research). Most of these opinions do not directly state that all non-profit organizations are business organizations or that the non-profit organizations in question were business organizations, but rather simply apply the law as though they were.

[5] The General Court directed in creating the Commission that all conflict of interest law opinions issued by the Attorney General before November 1, 1978, "shall remain valid and shall be binding on the state ethics commission until and unless reversed or modified by the state ethics commission." St.1978, c. 210, § 24.

[6] *See, e.g.,* EC-COI-79-114 (private, non-profit corporation serving as local anti-poverty agency); 80-1 (community non-profit corporation financing low-to-moderate housing acquisition and renovation); 80-40 (education assistance corporation); 80-56 (non-profit corporation, funded through dues, grants and

donations, providing consulting and management services to community arts councils, arts organizations, schools and individual artists, coordinating art activities and encouraging the development of art programs); 80-81 (private non-profit organization, partially funded by state grants, serving developmentally disabled citizens through citizen advocacy and direct counseling is a business organization); 81-22 (private non-profit corporation encouraging citizen participation in public affairs and government, funded by private corporate gifts and foundation grants, and receiving no state funds and providing no direct program services to any state agency); 92-1 (non-profit community action corporation working to reduce poverty and funded by governmental grants and private sources); EC-COI-94-7 (non-profit home care corporation providing community services under contract with state agency); EC-COI-95-10 (non-profit corporation acting to eliminate urban slums and blight and receiving public funding); EC-COI-98-5 (non-profit corporation providing various services to municipal public schools as paid vendor); EC-COI-00-3 (non-profit community development corporation receiving loans, grants and financing from state agencies). As with the Attorney General's opinions, most of these opinions do not directly state that non-profit organizations are business organizations or that the non-profit organization in question is a business organization, but rather simply apply the law as though they were.

[7] In EC-COI-92-26, concerning a § 501(c)(3) corporation devoted exclusively to educational purposes, the Commission advised in a footnote "Non-profit entities and municipalities are considered to be 'business organizations' for purposes of § 19." (The Commission has since determined that municipalities are not business organizations in EC-COI-06-03.)

[8] EC-COI-88-4.

[9] EC-COI-92-11.

[10] *See, e.g.*, EC-COI-92-1; 94-7; 95-10; 98-5; 00-3.

[11] By contrast, G. L. c. 268B, the financial disclosure law enacted in 1978, expressly defines "business" as "any corporation, partnership, sole proprietorship, firm, franchise, association, organization, holding company, joint stock company, receivership, business or real estate trust, or any other legal entity organized for profit or charitable purposes."

[12] Thus, for example, in proceeding we are guided by the canon that "[t]he intent of the Legislature is to be determined primarily from the words of the statute, given their natural import in common and approved usage, and with reference to the conditions existing at the time of enactment. This intent is discerned from the ordinary meaning of the words in a statute considered in the context of the objectives which the law seeks to fulfill. Whenever possible, we give meaning to each word in legislation; no word in a statute should be considered superfluous." EC-COI-92-11 (quoting, with citations omitted, Int'l Organization of Masters, etc. v. Woods Hole, Martha's Vineyard & Nantucket Steamship Authority, 392 Mass. 811, 813 (1984); See G. L. c. 4, § 6, "Words and phrases shall be construed according to the common and approved usage of language; but technical words and phrases and such others as may have acquired a peculiar and appropriate meaning in law shall be construed and understood according to such meaning."

[13] "Organization" means "something that has been organized or made into an ordered whole" or "a number of persons or groups having specific responsibilities and united for a particular purpose." *The American Heritage Dictionary* (2nd College Ed. 1985) at 876. *See Commission Advisory No. 90-01*: *Negotiating for Prospective Employment* ("The term 'organization' includes corporations, business trusts, estates, partnerships, associations, two or more persons having a joint or common interest, and any other legal or commercial entity, as well as federal, state or local governmental agencies and subdivisions.")

[14] The fact that VCS is a corporation establishes that it is an organization, but not that it is a business organization. A corporation is simply a legally recognized combination of persons acting as a separate entity for a purpose, which may or may not be a business purpose.

[15] "Person" also has a meaning in law which includes corporations, along with societies, associations and partnerships. G. L. c. 4, § 7.

[16] "The term 'business' has no definite or legal meaning." *Black's Law Dictionary* (4th ed., 1968) at 248. The Supreme Judicial Court has, however, stated, in construing the term "business" in an insurance policy exclusion, that "'Business,' as commonly understood, is. . .an activity engaged in for the purpose of gain or profit." *Newell-Blais Post #443 v. Shelby Mut. Ins.Co.,* 396 Mass. 633, 636 (1985) (charitable non-profit organization not engaged in "business" of selling or serving alcoholic beverages).

[17] *The American Heritage Dictionary* (2nd College Ed. 1985) at 220.

[18] *Black's Law Dictionary* (4th ed., 1968) at 248-249.

[19] *Black's Law Dictionary* (7th ed. 1999) at 192. The term is further defined as "a particular occupation or employment habitually engaged in for livelihood or gain."

[20] Some non-profit organizations may be formed for non-serious purposes.

[21] The term "business organization" is to be distinguished from the term "business corporation," which has a definite common usage and legal meaning. A "business corporation" is commonly defined as a "corporation formed to engage in commercial activity for profit." *Black's Law Dictionary* (7th ed. 1999) at 341. Thus, for example, the regulations of the Secretary of State relative to the Massachusetts Business Corporation Act, G. L. c. 156D, generally define corporation to mean a corporation established "for the purpose of carrying on business for profit." 950 CMR 113.02

[22] The draft bill which ultimately became G. L. c. 268A was drafted by the Special Commission Established to Make an Investigation of an Act Establishing a Code of Ethics to Guide Employees and Officials of the Commonwealth in Their Performance of Their Duties ("the Special Committee"). *See* Mass. House No. 3650 of 1962. The Special Committee based their draft on a House bill then pending in the United States Congress, which included the same "business organization" language. Massachusetts enacted its conflict of interest law first. Subsequently, the Senate Judiciary Committee modified the federal bill by striking "business," stating "[the bill] at one point speaks in terms of an employee's disqualifying connection with a 'business organization,' thus leaving open the implication that he would remain eligible to act for the Government in a matter involving a nonprofit organization with which he is connected. A great number of universities, foundations, nonprofit research entities, and other similar organizations today are engaged in work for the Government. Conflicts of interest may arise in relation to them just as in the case of the ordinary business for profit. The committee therefore has deleted the word "business" form the subsection to make it clear that improper dealing by a Government employee in connection with nonprofit organizations is also prescribed [sic]." S. Rep. No. 2213, 87th Cong., 2d Sess. 14 (1962).

[23] Some leading legal scholarship from the period of the statute's enactment supports a narrow reading of business organization. According to a commentator who was a member of the Special Committee, "Under Section 19 an officer or employee of a 'business organization' must abstain as a municipal employee if the organization has a financial interest in the particular matter; an officer or employee of a charitable or other non-profit organization need not." Robert Braucher, Conflict of Interest in Massachusetts, in Perspectives of Law: Essays for Austin Wakeman Scott (Pound, Griswold & Sutherland 1964) at 24. Another commentator noted, "Apparently 'business organization' refers to a commercial or profit-making organization to the exclusion of educational, charitable and other non-profit institutions." William G. Buss, *The Massachusetts Conflict-of-Interest Statute: An Analysis*, 45 B.U.L. Rev. 299 (1965).

[24] Thus, while Braucher appears certain that business organization categorically excludes non-profit organizations, Buss, by contrast, states that this is "apparently" the case, indicating some level of doubt. Significantly, the Senate Judiciary Committee comments do not state that the inclusion of the word

business means or even necessarily implies the exclusion of non-profit organizations, but rather only that its inclusion "leav[es] open th[at] implication" and that the deletion of the word "mak[es] it clear that improper dealing by a Government employee in connection with nonprofit organizations is also prescribed." S. Rep. No. 2213, 87th Cong., 2d Sess. 14 (1962). Finally, the fact that the Senate Judiciary Committee comments contrast non-profit organizations with "the ordinary business for profit," arguably reflects that even in 1962 a non-profit organization may have been in some contexts considered a type of business organization, albeit not an ordinary one.

[25] Although it cannot be said to have endorsed the Attorney General's construction of business organization to include non-profit organizations, the following actions by the General Court in 1978 were consistent with the Attorney General's position. The General Court, in creating the Commission, directed that all conflict of interest law opinions issued by the Attorney General before November 1, 1978, "shall remain valid and shall be binding on the state ethics commission until and unless reversed or modified by the state ethics commission." St.1978, c. 210, § 24. In addition, at the same time, the General Court enacted in G. L. c. 268B, the financial disclosure law, a broad definition of "business" which includes "any corporation, partnership, sole proprietorship, firm, franchise, association, organization, holding company, joint stock company, receivership, business or real estate trust, or any other legal entity organized for profit or charitable purposes."

[26] *Graham v. McGrail*, 370 Mass. 133,140 (1976).

[27] These sections balance protection against restriction: thus, the broader the prohibition, the greater the protection against the influence of private interests, but also the greater the restrictions on the public employee's ability to act. By qualifying "organization" with "business," the Legislature apparently chose to reduce the degree of protection afforded by the sections and increase the public employee's freedom to act. Why the Legislature made this apparent choice is not known. The Legislature may have done so because it judged that the impartiality of a public employee associated with a non-business organization would be less compromised in particular matter involving the financial interests of that organization than that of one associated with a business organization or, alternatively, because it considered the influence of associations with non-business organizations to be an insufficient danger to public integrity to warrant criminal prohibitions and sanctions (instead relying on the code of conduct provisions of § 23, discussed below).

[28] Nor would it serve the purpose of the sections to, more narrowly, exclude all public charities. While the activities of privately-created charitable non-profit organizations like VCS must primarily benefit the public at large or a sufficiently large charitable class, such organizations are nonetheless non-governmental corporate entities with their own financial interests which are separate from, and capable of conflicting with, those of the government and the general public. *See* EC-COI-02-02 (upheld on appeal to the Superior Court).

[29] In our view, a public employee's judgment in an official matter may be just as conflicted by his loyalty to a non-profit organization in which he is serving as an officer, director, employee or trustee as by his loyalty to a commercial for-profit corporation by which he is privately employed. In either case, the public employee's conflicting loyalties deprive the public of the impartial and unbiased decision-making that §§ 6, 13 and 19 were created to help ensure. We are constrained, however, to apply the statute as the Legislature drafted it.

[30] Non-profit organizations may conduct some of their activities for profit provided that such income is used for its corporate purposes and not distributed to its members.

[31] "Business," as indicated above, generally refers to an activity of some continuity, regularity and permanency.

[32] The business activity must be sufficiently significant to the organization to be a reasonable basis for characterizing the organization as a business organization for G. L. c. 268A purposes.

[33] *See* EC-COI-92-11.

[34] In other contexts, the Commission has found ten percent to be the threshold for substantiality. *See* EC-COI-92-34 (more than ten percent of the town's population is a "substantial segment" of that population for § 19(b)(3)). *Compare* EC-COI-83-34 (that services to a client accounted for ten percent of an attorney's time and income was not sufficiently substantial to make him an employee of the client within the meaning of § 6).

[35] We recognize that there may be non-profit organizations whose principal activities are clearly non-business, such that they could not reasonably be called businesses, which however receive substantial income from unrelated business activities. Because VCS is not such an organization, we do not here need to and do not decide whether § 19 (or § 6 or § 13) issues would be raised for the officers, directors or employees of such non-profit organizations with respect to their participation as public employees in matters affecting the unrelated business activities based on the non-profit organizations' financial interests in the income from the activities.

[36] *Commission Advisory No. 90-01: Negotiating for Prospective Employment*.

[37] G. L. c. 268A, § 23(b)(3). Section 23(b)(3) prohibits a public employee from, knowingly or with reason to know, engaging in conduct which would cause a reasonable person, having knowledge of the relevant circumstances, to conclude that any person or entity can improperly influence him or unduly enjoy his favor in the performance of his official duties, or that he is likely to act or fail to act as a result of kinship, rank, or position of any person. To dispel the "appearance of a conflict," § 23(b)(3) requires that, prior to participation, an elected public employee make a full public disclosure of all of the relevant facts.

[38] G. L. c. 268A, § 23(b)(2). Section 23(b)(2) provides, in relevant part, that no public employee may, knowingly or with reason to know, use his official position to secure unwarranted privileges or exemptions of substantial value for himself or others.

[39] "[T]he distinguishing factor of acting as agent within the meaning of the conflict law is 'acting on behalf of' some person or entity, a factor present in acting as spokesperson, negotiating, signing documents and submitting applications." In Re Sullivan, 1987 SEC 312, 314-15. See In Re Reynolds, 1989 SEC 423, 427; Commonwealth v. Newman, 32 Mass. App. Ct. 148, 150 (1992). By contrast, merely discussing or voting as a Board member on a matter is not an act of agency.

[40] G. L. c. 268A, § 17. Under § 17(a) and (c), a municipal employee generally may not, directly or indirectly, receive compensation from or act as agent or attorney (even if unpaid) for anyone other than the municipality in connection with any particular matter in which the municipality is a party or has a direct and substantial interest.